

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  NORTHWEST IOWA POWER COOPERATIVE	DOCKET NO. E-21451
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE,  
ESTABLISHING DATE, TIME AND PLACE FOR HEARING,  
AND PROPOSING TO TAKE OFFICIAL NOTICE**

(Issued March 5, 2001)

On June 5, 2000, Northwest Iowa Power Cooperative (NIPCO) filed a petition requesting a franchise to erect, maintain and operate approximately 9.59 miles of nominal 69 kilovolt (kV) (72.5 kV maximum) electric transmission line proposed to be constructed in Pottawattamie County, Iowa. The proposed line would begin at a point of interconnection with NIPCO's existing north-south 69 kV transmission line in Section 17, T77N, R40W, and extend westerly to a proposed new Neola substation in Section 13, T77N, R42W, all in Pottawattamie County, Iowa.

The petition requests that NIPCO be vested with the power of eminent domain pursuant to Iowa Code § 478.6 (2001) and 199 IAC 11.2(6). Iowa law requires a hearing to be set in an electric transmission line franchise proceeding when the petition involves the taking of property under the right of eminent domain. Iowa Code § 478.6 (2001). The same code section and Utilities Board rules at 199 IAC 11.5(3) require the Utilities Board (Board) to prescribe the notice to be served upon the

owners of record and parties in possession of the property over which the use of the right of eminent domain is requested.

On February 23, 2001, the Board assigned this proceeding to an administrative law judge to establish a procedural schedule, set a date for hearing, rule on the petition, and perform other necessary functions pursuant to 199 IAC 7.1(4).

### **The Board's authority and jurisdiction**

The Board has authority to grant franchises to erect, maintain and operate lines for the transmission, distribution, use and sale of electric current along, over, or across any public highway or grounds outside of cities. Iowa Code §§ 478.1, 478.2 (2001). The Board may grant franchises in whole or in part upon such terms, conditions and restrictions, and with such modifications as to line location and route, as may seem to it to be just and proper. Iowa Code § 478.4 (2001).

The Board also has authority to vest the holder of a franchise with the right of eminent domain to acquire the necessary interests in real estate for the construction, erection, maintenance and operation of transmission lines, wires and cables for the transmission of electricity. Iowa Code §§ 478.6, 478.15 (2001).

This contested case proceeding is governed by the substantive and procedural provisions of Iowa Code Chapters 17A and 478 (2001), and 199 IAC 11.

### **The issues**

NIPCO's petition, Exhibit D, states that the purpose of the proposed transmission line and substation is to strengthen the electric service and enhance

service reliability in the southeast corner of the service area of Harrison County Rural Electric Cooperative (REC), a NIPCO member, and to relieve load from NIPCO's Hardscratch Substation. It further states the new Neola Substation will also provide necessary backup for this area, and will be the only backup for the east and south circuits out of the Hardscratch Substation. Exhibit D states this portion of Harrison County REC's service area is experiencing significant electric load growth due to new residential developments, expanded farming operations, and major expansion at the Tri-Center Community School facilities. Harrison County REC also became the supplemental power supplier for the city of Neola on April 1, 1999, and Exhibit D states the proposed transmission line and substation will be used to provide improved electric service and reliability to the city of Neola.

NIPCO must demonstrate that the proposed transmission line is necessary to serve a public use. NIPCO must also show that the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. NIPCO must demonstrate that the transmission line is proposed to be constructed near and parallel to railroad rights of way or along division lines of land wherever practical and reasonable, and so as not to unnecessarily interfere with the use of the land by the occupant. Iowa Code § 478.18 (2001). In addition, the administrative law judge will determine whether she should impose any terms, conditions and restrictions on the franchise, if granted, relating to line location and route. Iowa Code § 478.4 (2001). Whether the proposed construction meets the

requirements of Iowa Code § 478.19, the remainder of Iowa Code chapter 478, and Board rules at 199 IAC 11 will also be considered.

Before NIPCO can be vested with the power of eminent domain, it must demonstrate that the taking of private property described in its petition is necessary for public use. Iowa Code § 478.6 (2001). NIPCO is entitled to be vested with the power of eminent domain only if and to the extent as the Board may approve, prescribe, and find necessary for public use. Iowa Code §§ 478.6; 478.15 (2001). The property subject to the grant of eminent domain may not exceed one hundred feet in width for right of way. Iowa Code § 478.15 (2001).

**Prepared testimony and exhibits**

All parties will have the opportunity to present evidence and argument on all issues involved in this proceeding, and to respond to evidence presented to opposing parties. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4) (2001). The proposed decision and order that the administrative law judge will issue in this case must be based solely on evidence contained in the record and on matters officially noticed in the record. Iowa Code §§ 17A.12(6) and (8) (2001). Unless contrary arrangements are made at the hearing, all such evidence will be received at the hearing, and the record will then be closed to further evidence.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing and areas needing further clarification at the hearing. Prepared testimony contains all statements that a

witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14; 478.4 (2001). This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

NIPCO must file prepared direct testimony and exhibits prior to the hearing. NIPCO's prepared testimony must address the issues listed above and the issues identified in the attached report from Mr. Dennis Hockmuth. In addition, NIPCO's prepared testimony must address the following questions:

- 1) Were possible route alternatives, particularly those not requiring eminent domain, considered by NIPCO? Describe them, and discuss why they were rejected. Specifically, why does the transmission line have to go across the Ring property? Could the line go around the Ring property? If not, why not?
- 2) Did NIPCO discuss possible route alternatives with the Rings to attempt to negotiate an agreed route? What happened?

3) Did the Rings propose any alternate routes? If yes, describe them. Explain why NIPCO rejected them.

4) Pictures 6 and 7 taken September 27, 2000 by Mr. Hockmuth show a gravel road with what appears to be a distribution line running along it. Could NIPCO build the transmission line along the path of the gravel road/distribution line instead of across the Ring property? If not, why not?

5) The petition proposes three pole structures on the Ring property. Is it necessary to have all three-pole structures on the Ring property? If yes, why?

In addition, NIPCO's prepared direct testimony must respond to issues raised in all written objections that are received by NIPCO at least seven days before the deadline for filing NIPCO's prepared direct testimony. New written objections filed with the Board and received by NIPCO less than seven days before the deadline for filing NIPCO's prepared testimony, or received by NIPCO after the filing of its prepared testimony and at least seven days before the deadline for filing NIPCO's prepared rebuttal testimony, must be addressed in NIPCO's prepared rebuttal testimony.

NIPCO must file its plan and profile drawings of the proposed transmission line as an exhibit to its prepared direct testimony.

The Office of Consumer Advocate, Iowa Department of Justice (Consumer Advocate), and any other parties may also file prepared testimony and exhibits

before the hearing in accordance with the procedural schedule established in this order.

A party who chooses not to file prepared testimony and exhibits will not be precluded from participating in the proceeding. Out of fairness, however, a party having a substantial amount of information to present should present that information by filing prepared testimony and exhibits. An objector who does not intend to present evidence going substantially beyond the information contained in the letter of objection need not file prepared testimony.

### **Party status**

Presently, NIPCO and the Consumer Advocate are the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2 (2001). Anyone who files an objection pursuant to Iowa Code § 478.5 (2001) is presumed to be a party in this case. However, no objector is entitled to party status merely because that person has written a letter. To qualify as a party, the objector must be able to demonstrate that it has some right or interest that may be affected by the granting of the franchise. Iowa Code §§ 478.5; 17A.2(5) and (8) (2001). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the franchise will not longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence at the hearing that will explain the nature of their specific rights or interests they believe should be protected, and that shows how their rights or interests will be affected by the franchise. As discussed above, to the extent that this

evidence goes substantially beyond the information already communicated to the Board in an objection letter, it should be written down and filed as prepared testimony according to the procedural schedule established below.

If the Rings choose to file an objection, they will be considered parties, since NIPCO has requested authority to exercise the right of eminent domain to secure an easement for the right of way over the Rings' property.

Appearances should be filed as soon as possible with the Acting Executive Secretary, Iowa Utilities Board, 350 Maple, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC 2.2(16).

Any party who communicates with the Board should send an original and three copies of the communication to the Acting Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding, including objectors. These requirements apply, for example, to the filing of an objection, an appearance, or to the filing of prepared testimony and exhibits with the Board.

Those who are deemed to be parties will receive copies of all motions, testimony, exhibits and orders as may be filed in this docket after they have filed their objection or appearance. If a person files an objection or appearance after some or all of the prepared testimony and exhibits have already been filed, that person will not receive copies of the prepared testimony and exhibits that were previously filed.



Those who enter the case after some of the parties have already filed their prepared testimony and exhibits should contact those other parties directly to obtain a copy of those materials. They may also inspect the documents at the Iowa Utilities Board Records Center, 350 Maple, Des Moines, Iowa 50319.

The parties should take note that NIPCO has already filed its petition in this case. The petition and supporting exhibits contain, among other things, a legal description and map of the route, technical information describing typical materials and equipment, a statement asserting the line is necessary to serve a public use, and descriptions of the proposed taking of private property for public use. Other motions, testimony, exhibits and orders may have also been filed. The materials that have been filed in this docket are available for inspection at the Utilities Board Records Center.

All parties should examine Iowa Code Chapter 478, 199 IAC 11, and 199 IAC 1.8 for other substantive and procedural rules that apply to this case.

**Approval of eminent domain notice**

On September 20, 2000, NIPCO submitted a notice to be served upon the Rings, the owners of record and parties in possession of the parcel of land over which the right of eminent domain is sought. During the 2000 session, effective immediately, the legislature added the requirement that the notice include the statement of individual rights required pursuant to Iowa Code section 6B.2A, subsection 1. Iowa Code § 478.6 (2001). The attorney general adopted such a statement of individual rights as required by Iowa Code section 6B.2A (1)(f) (2001).

The statement of individual rights is contained at 61 IAC 34.1. This statement must be added to the notice proposed by NIPCO. It may be added as an enclosure. In addition, the following changes must be made: 1) change the reference to the Iowa Code from 1999 to 2001; and 2) a copy of this order must be listed as one of the enclosures in the notice, and must be provided to the Rings with the other listed enclosures.

Once these changes are made, the notice will substantially comply with Iowa Code § 478.6 (2001) and 199 IAC 11.5(3) and will be approved. NIPCO does not need to resubmit the notice for approval prior to serving it, but must file a copy of the notice as it was served according to the procedural schedule set forth below. Iowa Code § 478.6 (2001); 199 IAC 11.5(3).

**Proposal to take official notice**

On February 21, 2001, Mr. Dennis P. Hockmuth, staff engineer of the Utilities Board, filed a report concerning NIPCO's petition. A copy of his report, dated February 21, 2001, is attached to this order. Pursuant to Iowa Code § 17A.14(4) (2001), the administrative law judge proposes to take official notice of the report and the facts contained therein so as to make them a part of the record of this case. Iowa Code §§ 17A.12(6)(c); 17A.14(4) (2001). Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and at least five days prior to the hearing. The parties will have the opportunity to contest the information contained in the report in prefiled testimony and at the hearing, and they may also cross-examine Mr. Hockmuth concerning the contents of his report at

the hearing. However, Mr. Hockmuth's attendance at the hearing will be assured only if at least one party files a request to cross-examine him in accordance with the procedural schedule set forth below.

**IT IS THEREFORE ORDERED:**

1. Each person who files a letter of objection to the petition of NIPCO in this docket will be presumed to be a party in this proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the grant or denial of the franchise.

2. Objections must be made in writing. An original and three copies must be filed with the Acting Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, IA 50319-0069. Objections must be filed no later than twenty days after the date of last publication of notice unless good cause is shown for the late filing.

3. The following procedural schedule is established:

a. On or before March 30, 2001, NIPCO must file prepared direct testimony and exhibits relating to its petition for franchise. In its testimony, NIPCO must address the issues and questions enumerated in the body of this order, and must include as an exhibit its plan and profile drawings of the transmission lines.

b. On or before April 20, 2001, the Consumer Advocate and any objector may file prepared responsive testimony and exhibits.

c. On or before May 11, 2001, NIPCO may file prepared rebuttal testimony and exhibits.

d. A public hearing for the presentation of evidence and the cross-examination of witnesses will be held beginning at 10:30 a.m. on May 16, 2001, in the Avoca Court House, 201 N. Elm Street, Avoca, Iowa. Parties also must be available for hearing on May 17, 2001 in the event the hearing is not completed on May 16, 2001. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

4. The notice submitted by NIPCO must be amended, and once amended as discussed in the body of this order, is approved. NIPCO must serve a copy of the notice on the Rings, owners of record and parties in possession, along with the enclosures listed in the notice. NIPCO must file a copy of its amended notice with its prepared direct testimony.

5. The administrative law judge proposes to take official notice of a report and the facts contained therein filed in this docket by Utilities Division engineer Mr. Dennis P. Hockmuth, dated February 21, 2001, and attached to this order. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Mr. Hockmuth will be available at the hearing to be cross-examined about the contents of his report if at least one party files a request for cross-examination by May 11, 2001. Mr. Hockmuth's report is available electronically. If any party wants an electronic version, they should call Mr. Don Stursma at 515-281-5546.

6. Pursuant to Iowa Code § 478.6 (2001), a copy of this order will be served by ordinary mail upon NIPCO and the Consumer Advocate. There are currently no outstanding objections regarding the franchise petition.

7. A copy of this order also will be served by ordinary mail upon Mr. Gerald L. Ring and Mrs. Mary Josephine Ring, 31598 - 300<sup>th</sup> St., Neola, Iowa 51559, the owners of record and parties in possession of the parcel of land over which NIPCO seeks to be vested with the right of eminent domain.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Acting Executive Secretary

Dated at Des Moines, Iowa, this 5<sup>th</sup> day of March, 2001.

**IOWA DEPARTMENT OF COMMERCE**  
**UTILITIES DIVISION**  
**Safety and Engineering Section**

**To:           Docket No. E-21451**

**Date: February 21, 2001**

**From: Dennis P. Hockmuth, P.E.**

**Subject: Staff Comments on Northwest Iowa Power Cooperative 69 kV Electric Transmission Lines in Pottawattamie County, Iowa.**

## General Background

On June 5, 2000, Northwest Iowa Power Cooperative (NIPCO) filed with the Iowa Utilities Board (IUB) a petition for electric franchise for 9.59 miles of 69 kV electric transmission line proposed for construction in Pottawattamie County, Iowa. This petition was assigned to Docket No. E-21451. NIPCO's petition also requests the right of eminent domain (ED) for one parcel of property. One objection was originally filed on July 8, 1999. It was subsequently withdrawn in a notarized document signed on January 20, 2000.

The 9.59 miles of transmission line for which a franchise is sought would tap NIPCO's existing north-south 69 kV electric transmission line in Section 17, T77N, R40W and extend westerly to a proposed new Neola Substation in Section 13, T77N, R42W, all in Pottawattamie County. (See Exhibit E.4.)

NIPCO held the informational meeting required by Iowa Code § 478.2 on June 18, 1999. (See Exhibit G) After the filing of the original Petition and Exhibits, staff advised NIPCO of deficiencies in the filed documents. The petition and exhibits were later revised and the filing now appears to be in order.

NIPCO's Exhibit D states that the purpose of its proposed line and substation is to strengthen service and enhance reliability in the southeast corner of the service area of Harrison County Rural Electric Cooperative (REC), a NIPCO member, and to relieve load from NIPCO's Hardscratch Substation. The new Neola Substation will also provide backup for this area. The REC indicates significant electric load growth is occurring due to new residential developments, expanding farming operations, and major expansion at the Tri-Center Community School facilities. The REC also became the supplemental power supplier for the City of Neola on April 1, 1999. The proposed transmission line and substation is allegedly needed to provide improved electric service and reliability to the City of Neola.

199 IAC 11.2(5) requires, in part, that Petition Exhibit D contain “such additional substantiated allegations as may be required by Iowa Code § 478.3(2).” That subsection requires the petition include written explanations dealing with the relationship of the project to

various planning issues and possible alternatives. The Exhibit D filed with this petition provided this information.

NIPCO's Petition for this line requests the right of eminent domain for one parcel of land. The record owners, as well as the persons in possession of that property, are Gerald and Mary Ring, 31598 300<sup>th</sup> Street, Neola, IA 51559.

### **Notice and Hearing**

Since eminent domain was requested, Iowa Code § 478.6 requires the Utilities Board set this docket for a hearing. Pursuant to the same Iowa Code § 478.6 and 199 IAC 11.5(3), in addition to a published notice a certified mail written notice of hearing must be served upon the owners of property for which eminent domain is requested. The notice is sent by the petitioner but must be in a form approved by the Board.

A proposed form of notice was provided on September 21, 2000. A copy is attached to this memorandum. The Board or the Administrative Law Judge assigned to this case will need to rule on this notice. The Iowa Code edition and hearing date will need to be updated, but otherwise staff believes the proposed form of notice is acceptable.

### **Engineering**

The proposed transmission line would have a nominal operating voltage of 69,000 volts, and a maximum voltage of 72,500 volts. NIPCO states in the petition that the proposed line will be constructed and maintained to meet the requirements of the Iowa Electrical Safety Code (IESC) (199 IAC 25) and Iowa Code chapter 478. The engineering specifications and drawings submitted in Petition Exhibit C appear to show code compliance.

NIPCO's Exhibit C states the support poles would be 50-80 foot single wooden pole or 60-80 foot two-pole H-frame wooden structures. Guying and anchors may be needed where the proposed line would change direction, although there are no proposed anchors on the eminent domain parcel.

On the typical line structure, each of the three phase conductors would be carried on wishbone configuration structures. On the eminent domain parcel, each of the three phase conductors would be carried on a 22 foot long crossarm mounted under the two-pole H-frame wooden structures. (See Exhibit C pole top configuration drawings.) The poles are 10.5 feet apart. The conductors are supported on insulators about 5.25 feet horizontally away from the poles and about 3 feet vertically below the crossarm. The two shield wires are about 5.5 feet above the crossarm. The shield wires, mounted at the top of the poles, are to protect the phase wires from lightning. Under worst case conditions (severe heat or ice

loads) the bottom transmission phase conductor would be 21 feet above the ground, and may be several feet higher under more normal conditions.

### **The Route**

Except for crossing public roads, the proposed route is totally on private property. About half of the proposed route will be along and parallel to public road right-of-way. The remainder of the route will be on private property in Sections 24, 22, 17, & 18, T77N, R41W and Section 13, T77N, R42W. All of the proposed line appears to follow division lines of land (section lines, quarter section lines, etc.) Iowa Code § 478.18 requires the route follows railroads or division lines of land where "practicable and reasonable."

NIPCO's Exhibits A and B show the proposed route commences at its eastern terminus (the south quarter corner of Section 17, T77N, R40W) at the existing NIPCO 69 kV transmission line and continues west about 1.75 miles. The line then turns south for one half mile, west for three quarters mile, and north one half mile to the north east corner of Section 23. This segment "offset" deviates from the north line of Section 24 due to an objection filed by Mary L. Watkins. This offset now traverses Mrs. Watkins south property fence line instead of across her open agricultural land. With NIPCO's revised route, Mary Watkins withdrew her objection.

The route then continues west for about 3.5 miles to the north quarter corner of Section 20. It turns north for one half mile and thence west along an east-west centerline for almost 1.75 miles to the eastern edge of the eminent domain parcel in the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 13, T77N, R42W. The line continues westerly across the Gerald Ring property and another quarter mile to the west terminus at the new Neola Substation in the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 13.

The proposed route was inspected by Board staff on June 17, 1999, June 30, 2000, September 27, 2000, and February 13, 2001. On September 26, 2000, I called Gerald Ring to get authority to enter their property to inspect NIPCO's proposed transmission line. Mrs. Mary Ring wanted her husband to grant that authority. He called later to allow me to come the following day. During my field inspection, pictures (as attached) were taken on September 27, 2000. The Petition Exhibit B map appeared accurate. What could be directly observed found the land throughout the route is rolling to hilly. The ground is in agricultural land use. There are numerous trees along the proposed route that will need to be trimmed or removed.

There are two locations with grain bins and a building near the route where the line must be raised higher to meet IESC clearance standards. Staff field inspection noted the building or low shed and a steel grain bin in the NE  $\frac{1}{4}$  of Section 20, T77N, R41W and a steel grain bin in the NW  $\frac{1}{4}$  of Section 23, T77N, R41W. Such buildings or grain bins are of



particular concern due to the risk that people and portable augers or elevators used to load and unload the bins may contact nearby electric lines; see 199 IAC 25.2(3). However, NIPCO has provided information showing that the line clearances from these structures would comply with the National Electrical Safety Code requirements.

The nearest east-west portion of the proposed line parallels one other transmission line that is about 12 miles away. NIPCO indicated this in Exhibit D in response to Iowa Code § 478.3.2.d, stating "The relationship of the proposed project to the existing electric utility system and parallel existing utility routes." There are no other existing utility facilities in or near the projected area with the voltage and capacity of the proposed project.

### **Objection/Eminent Domain**

One objection was filed July 8, 1999, by a landowner, Mary Watkins, to the route as proposed at the Informational Meeting. Her property is in Sections 13 and 24, T77N, R41W. This objection was subsequently withdrawn after NIPCO relocated the final route around the edge of her property to reach accommodation with her. Gerald and Mary Ring have not filed an objection.

NIPCO's Exhibit E has requested the right of eminent domain for a permanent easement on the Gerald and Mary Ring property. The Ring property is located in the East ½ of Section 13, T77N, R42W. In the area along the proposed route, the Ring property is in agricultural land use. In the fall of 2000, the land was used for soybeans (see attached pict. 9 & 10), hay clover (see attached pict. 8), and cattle grazing grass (see attached pict. 6, 7, 12, & 13).

The company proposes to place three two pole structures plus overhang of conductors and a shield wire for a 69 kV electric transmission facility on the Ring property. The easement sought would be 1813 feet long by 70 feet wide. NIPCO requests the right to construct, operate, maintain, replace, and remove the proposed line and the right to cut and trim trees and shrubbery to the extent necessary to keep them clear of said transmission line. The company also requests the right of ingress and egress to and from the easement. Our field inspection agrees with NIPCO's statement that there are no dwelling or other buildings on the described property located within 100 feet of the proposed transmission line or the easement parcel area.

The proposed route on the Ring property is approximately but not exactly, parallel to the east-west centerline of the section. Approaching the Ring property from the east, the line would be across the road from the Ring homestead on south side of the east-west road (300<sup>th</sup> Street) about 120 feet south of the house (see attached pict. 3 & 4). (See Exhibit E.3.) This places the centerline of the route, at the east end of the Ring easement parcel, about 70 feet south of the east-west quarter section line. The centerline of the easement parcel at west end would be 14 feet north of the center of Section 13. So the route is at a slight angle,

and crosses, the division line of land. To place the route exactly parallel to the quarter section line would require either placing it in front of the Ring residence or an awkward crossing of the road. It would also probably require removal of the tree plantings discussed below (see attached pict. 6 & 7).

There would be three two-pole H-frame wooden structures on the eminent domain parcel, east to west spaced about 798, 480, and 533 (to a pole just west of the Ring property line) feet apart. (See Exhibit E) The two-pole structure located at the east end of the easement parcel will be on the Ring property two feet away from the road right-of-way fence line. (See Exhibit E.3.) The other 2 two-pole structures will be placed in open fields on terraces. A terrace is a raised earthen embankment, between 3-5 feet high, to restrict water erosion. The terrace has no crops, only grass, located thereupon. Our field inspection finds the locations of all three structures do not appear to "unnecessarily interfere with the use of any lands"; see Iowa Code § 478.18.

There is a row of 12 small (2-3 feet high) pines trees (see attached pict. 6, 7, & 13) near the center of the easement parcel. It appears that the line of trees is parallel and an estimated 15-20 feet north of the east-west fence line, e.g., the Section 13 east-west quarter section line. From the map in Exhibit E.3, the centerline of the two pole structure is calculated to be about 33 feet south of the quarter section line. At the nearest point, the west end of the line of trees would be no closer than 37 feet [ $33' + 15' - 10.5'$  (route centerline to the north conductor)] to the line. This would not appear to be of concern to the trimming of those trees.

### **Summary & Conclusions**

The NIPCO filing appears to comply with 199 IAC 11.2 and available technical information indicates construction would comply with Iowa Utilities Board safety standards. Staff found no technical or engineering problems with the proposed route.

On September 21, 2000, NIPCO provided a final proposed notice to comply with Iowa Code § 478.6 and 199 IAC 11.5(3). The Board must approve and prescribe that Notice. A copy is attached. The Iowa Code references should be changed from 1999 to 2001, and the publication dates of the official notice will also need updating. Otherwise, the Staff believes the proposed Notice is acceptable.

Iowa Code § 478.4 states: "Before granting the franchise, the utilities board shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest." Staff neither accepts nor disputes NIPCO's statements on these issues in Exhibit D, but suggests NIPCO be asked to expand on these statements at the hearing.

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According to Petition Exhibits A and B and our staff inspections, the segment of the proposed line across the Gerald Ring easement appears to reasonably follow "division lines of lands," pursuant to Iowa Code § 478.18. The same code section requires routing that does not "unnecessarily interfere with the use of any lands by the occupant thereof." These provisions apply regardless of objection or eminent domain. Staff concludes that the route and pole placement proposed by NIPCO attempts to minimize interference with land use. However, NIPCO should be asked to explain and justify its route selection decision at hearing.

Attachments: -- Numbered field pictures  
-- NIPCO notice letter

1. Looking west along Rings north property, i.e., north line of the S  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of Section 13, T77N, R42W, from 300<sup>th</sup> Street. Note -- no trees or buildings on either side of the fence line.



2. Looking ENE'erly from 300<sup>th</sup> Street in Section 13 toward the "T" intersection.



3. Looking west from south side of Tomahawk Avenue, looking across the south end of the "T" intersection. Note Gerald Ring house, top center.



4. Looking west from south side of Tomahawk Avenue, looking across the south end of the "T" intersection. Note Gerald Ring house, northeast corner.





5. Looking SE from south side of Tomahawk Avenue, looking across the south end of the "T" intersection at the road sign. Note -- at the intersection: Tomahawk Avenue to the east, 300<sup>th</sup> Street to the west, and 300<sup>th</sup> Street to the north.



6. Looking ESE'erly from the N-S terrace near E-W quarter section line, near the location of structure 2. Note -- The proposed line will be along the south side of the E-W white gravel road (left center), crossing the curved road and angling WNW'erly across the grazing grass. Note Gerald Ring house, northwest side.



7. Looking "straight" east from the N-S terrace along the E-W quarter section line, near the location of structure 2. Note -- The row of 12 short (2-3 feet) pine trees. They parallel the E-W fence about 15-20 feet (estimated) feet north. Note Gerald Ring house, top center.



8. Looking east along the E-W quarter section line about half way between structures 2 and 3 (480 feet between these 2 structures). Note Gerald Ring house, top center.



9. Looking west along the E-W quarter section line from the location of structure # 3 on a terrace.



10. Looking west near the E-W quarter section line just east of the center of Section 13 on a terrace. Note -- The double larger brown fence posts, just east of the green trees (left center) is the center of Section 13. The proposed line, continuing west, would be 14 feet north of the E-W quarter section line, i.e., along the northern edge of the row of trees.





11. Looking north along the N-W quarter section line (barbed-wire fence) along the west side of the Ring property (west side of the green grass). Note -- The green trees (top center) are near the NW corner of the Ring property (NE corner of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 13).



12. Looking WNW'erly from the curve of 300<sup>th</sup> Street, at the south side of the E-W 300<sup>th</sup> Street. Note -- The proposed line will run WNW'erly across the grazing grass (see # 6 above) to a point "on the horizon" near the center of the picture, i.e., near the black cattle.



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13. Looking west from the driveway into to Ring Homestead yard along the E-W quarter section line. Note -- The E-W row of short pine trees near the center of the picture.



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NORTHWEST IOWA POWER COOPERATIVE  
P.O. Box 240  
LeMars, Iowa 51031-0240

Gerald L. Ring and Mary Josephine Ring  
31598 300th Street  
Neola, IA 51559

Re: Docket No. E-21451  
Notice of Hearing

Dear Mr. and Mrs. Ring:

You are hereby notified that a Petition for a Franchise to erect, maintain and operate an electric transmission line as provided for in Iowa Code Chapter 478 (1999), has been filed with the Iowa Utilities Board by Northwest Iowa Power Cooperative, and that the Petition includes an Exhibit A setting forth the maximum voltage, starting and ending points, route, and termini of the proposed line.

A segment of the proposed transmission line is proposed to be located upon property owned by you or in which you have some interest. The petitioner has included in its Petition a request that the Iowa Utilities Board grant petitioner the right of eminent domain over that portion of your property shown in the easement description of Exhibit E to the Petition.

You are further notified that the Iowa Utilities Board has, pursuant to the requirements of Section 478.6 of the Code of Iowa (1999), scheduled a hearing on the Petition for Franchise in Docket No. E-21451 and has fixed the time and place for an evidentiary hearing as follows:\_\_\_\_\_

Objections to the granting of the franchise must be in writing and filed in triplicate with the Iowa Utilities Board, 350 Maple Street, Des Moines, IA 50319-0069, no later than twenty (20) days after the date of the second publication of the official notice of the filing of the Petition. The date of the first publication of the official notice is \_\_\_\_\_, 2000. The date of the second publication is \_\_\_\_\_, 2000. You may attend the hearing whether or not you file an objection. You will be given the opportunity at the hearing to ask questions of petitioner's witnesses and to present evidence for consideration by the Board.

Copies of the following items are enclosed with this Notice of Hearing:

1. Official Notice of the Filing of Petition for Franchise;
2. Exhibit "A" Route Description;
3. Exhibit "B" Route Map;
4. Exhibit "E" Property and easement description;
5. Exhibit "E.3" Plat (aerial photo) illustrating easement area;
6. Exhibit "E.4" map showing your property in relationship to the proposed line route.

If you have disabilities and require assistive services or devices to observe or participate, you should contact the Iowa Utilities Board at 515-281-5256 in advance of the scheduled date for the evidentiary hearing to request that appropriate arrangements be made.

You have been contacted by our right-of-way representatives and we believe you are familiar with all of the details of the proposed route as it would affect your property. If you have any further questions about the proposed route, please call or write this office and we will arrange for a future meeting with our right-of-way representatives.

NORTHWEST IOWA POWER COOPERATIVE

By \_\_\_\_\_  
Steve Ver Mulm  
Vice President of Engineering and Operations